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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91207409
Party	Plaintiff The PNC Financial Services Group, Inc.
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Signature	/Naresh Kilaru/
Date	06/18/2013
Attachments	Opposition to Ashe's Motion for Summary Judgment - Final.pdf(1820713 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

_____)	
The PNC Financial Services Group, Inc.,)	
)	
Opposer,	)	Opposition No. 91207409
)	
v.	)	Mark: SPENDOLOGY
)	
	)	Serial No.: 85/456,136
Keith Alexander Ashe d/b/a Spendology,	)	Filing Date: October 25, 2011
	)	Published: June 12, 2012
Applicant.)	
_____)	

**OPPOSER’S OPPOSITION TO APPLICANT’S MOTION FOR SUMMARY
JUDGMENT AND OPPOSER’S CROSS-MOTION FOR SUMMARY JUDGMENT**

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For the reasons detailed below, Opposer The PNC Financial Services Group, Inc. opposes the motion for summary judgment filed by Applicant Keith Alexander Ashe and cross-moves for summary judgment on the issues of priority and likelihood of confusion.

I. INTRODUCTION

The critical issue in this opposition proceeding is priority: Which party first made a “use in commerce” of the mark SPENDOLOGY? Based on Ashe’s own evidence, there is no genuine issue of material fact that Ashe did not make a use in commerce, or any analogous trademark use, of SPENDOLOGY prior to PNC’s first use date of August 26, 2010. Even when viewing all of the facts in Ashe’s favor, the record evidence compels the denial of Ashe’s motion and granting summary judgment in favor of PNC.

II. FACTUAL BACKGROUND

A. Ashe’s Application for SPENDOLOGY

Ashe filed his Application No. 85/456,136 for SPENDOLOGY on October 25, 2011 for “web-based personal finance tools” under 15 U.S.C. §1051(a), alleging a first use in commerce date of June 18, 2011. In support of his application, Ashe submitted the specimen of use below, which he described as “a screenshot of the landing page for the Spendology website”:



On February 11, 2012, the PTO issued an Office Action rejecting the specimen “because it does not show the applied-for mark used in connection with any of the goods and/or services specified in the application.” The Examining Attorney advised Ashe that he could either submit a substitute specimen or amend his application to Section 1(b). On April 9, 2012, Ashe amended his application to Section 1(b) and further amended his description of services as follows:

Web-based personal finance tools, namely, providing a website featuring non-downloadable instructional videos in the field of finance, online financial calculators, and online information in the field of finance.

B. PNC’s Use of and Application for SPENDOLOGY

PNC began using its SPENDOLOGY mark on August 26, 2010 in connection with its Virtual Wallet website (www.pncvirtualwallet.com) for tools that help customers track and manage their expenses. (Ex. 1, Declaration of Bryan Mackrell ¶2.) Specifically, the tools provide customers with a visual and interactive way to see what they are spending their money on each month, break down expenses into categories like Education, Restaurants, and Gas, and allow customers to set a budget for each. (*Id.* at ¶3.) Examples of PNC’s use of its SPENDOLOGY mark are attached as Exhibit A to the Mackrell Declaration. (*Id.* at ¶4.)

On June 13, 2012, PNC filed Application Serial No. 85/650,817 to register its SPENDOLOGY mark with the U.S. Patent and Trademark Office for “an online money management tool that allows account holders to track balances, budgets, and expenses by category and time period.” The application was filed under 15 U.S.C. §1051(a), alleged a first use in commerce date of August 2010, and contained the following website printouts as specimens of use:

VirtualWallet
by PNC

← Previous VIRTUAL WALLET STUDENT* Next SAVINGS ENGINE* →

Spending Zone

Print this Page

Where'd all your money go?

Funny you should ask. Spending Zone is a traditional way to see your recent expenses, plus search for past transactions and view your purchases by transaction type. You get a clear, comprehensive list of what you've been spending your money on — along with when and where you've been spending it.

With **Spending Zone**, you can see, graphically, where you're spending your money each month on your debit and [PNC credit card](#) — by categories, such as "Education", "Restaurants", "Gas", etc. By setting budgets across the different categories you spend your money on, like restaurants, clothes, and gas, you can keep your spending under control. And you'll get emails when you're closing in on your max budget in these categories.

[FAQ: Spending Zone](#)

SPENDODOLOGY IN :60

Home | Explore Features | Account Details | How to Apply

Tell A Friend • Contact Us • Terms & Conditions • ATM/Branch Locator • Site Map • PNC Security Assurance • PNC Privacy Policy
 ©2011 The PNC Financial Services Group, Inc. All rights reserved. PNC Bank, Member FDIC.



VirtualWallet
by PNC

EVERYTHING YOU NEED TO KNOW ABOUT SPENDODOLOGY IN :60

← Previous VIRTUAL WALLET STUDENT* Next SAVINGS ENGINE* →

MARCH

BUDGET FOR SELECTED CATEGORIES

Overall Budget ⚠

Auto	<div style="width: 100%;"></div>	+ \$177
Gas	<div style="width: 100%;"></div>	+ \$90
Entertainment	<div style="width: 100%;"></div>	+ \$42
Dining	<div style="width: 100%;"></div> ⚠	+ \$10
Groceries	<div style="width: 100%;"></div>	
Healthcare	<div style="width: 100%;"></div>	

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On October 3, 2012, the PTO issued an Office Action citing Ashe's prior-pending application. Based on PNC's use of its SPENDODOLOGY mark since August 2010— which was earlier than the first use date Ashe had originally stated in his application (June 18, 2011) or Ashe's filing date (October 25, 2011)—PNC timely filed this opposition on October 10, 2012 based on priority and a likelihood of confusion.

Among his various affirmative defenses, Ashe claimed that he demonstrated “use analogous to trademark use” of his SPENDODOLOGY mark prior to PNC's first use date. (*See* Ashe's Answer and Affirmative Defenses at 3.)

III. ARGUMENT

A. The Summary Judgment Standard

To prevail on summary judgment, a party must demonstrate that there are no genuine issues of material fact for trial, and that it is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). Further, the evidence must be viewed in a light most favorable to the non-moving party, and all justifiable inferences are to be drawn in the non-moving party's favor. *Id.*; Fed. R. Civ. P. 56(c); *Opryland USA Inc. v. The Great American Music Show, Inc.*, 970 F.2d 847 (Fed. Cir. 1992). Here, even when the facts are viewed in a light most favorable to Ashe, it is clear there are no genuine issues of material fact that PNC has priority and that a likelihood of confusion exists between the parties' marks. Accordingly, summary judgment should be granted in favor of PNC.

B. There Is No Genuine Issue That PNC Has Priority in the SPENDODOLOGY Mark

PNC first used its SPENDODOLOGY mark in commerce on August 26, 2010. (Ex. 1, Mackrell Decl., ¶2.) Accordingly, to establish priority, Ashe must show that he used his SPENDODOLOGY mark in commerce prior to August 26, 2010. Unless Ashe can show such prior use, the earliest date upon which he may rely for priority is October 25, 2011, the filing date of his

application. 15 U.S.C. §1057(c); *Zirco Corp. v. American Tel. & Tel. Co.*, 21 USPQ.2d 1542 (TTAB 1991).

Based on Ashe's own interrogatory responses, there is no genuine issue of material fact that Ashe's first use in commerce of SPENDOLOGY was *after* August 26, 2010. Specifically, Ashe responded to PNC's Interrogatory No. 3 as follows:

PNC's Interrogatory No. 3:

State the date (by month and year) on which Applicant first used Applicant's Mark in commerce as a trademark for a "personal finance tool."

Ashe's Response to Interrogatory No. 3:

June 2011.

(Ex. 2, Applicant's Response to Opposer's First Set of Interrogatories.)

As the June 2011 date in Ashe's interrogatory response is consistent with the date of first use that Ashe originally alleged in his application (before amending to Section 1(b)), it stands to reason that the specimen Ashe submitted in connection with his application (shown on page 1 above) likely reflected the state of Ashe's "Spendology" website as of June 2011 (and likely the state of his website in October 2011 when he filed his application). As discussed above, the Examining Attorney found that Ashe's specimen "does not show the applied-for mark used in connection with any of the goods and/or services specified in the application." Instead of submitting a substitute specimen showing use of the SPENDOLOGY mark in commerce, Ashe amended his application to Section 1(b). Thus, even viewing the evidence in a light most favorable to Ashe, based on the record evidence it appears questionable whether Ashe had used his SPENDOLOGY mark in commerce even before June 2011.

To try and get around his lack of any real commercial use and assert trademark rights prior to PNC's first use date of August 2010, Ashe relies on the doctrine of analogous trademark use.

The evidence Ashe marshals in support of this argument, however, falls far short of the high burden to establish trademark rights under that doctrine. Again, the Board need look no further than Ashe's own interrogatory responses. In response to PNC's Interrogatory No. 1, which asked Ashe to describe all use of his SPENDOLOGY mark prior to September 2010, Ashe responded as follows:

- “Conducted background research and researched existing online tools. Deployed budgeting survey with express intent of analyzing data and utilizing findings to develop personal finance web apps. Developed problem statements, methodology, and algorithms for online personal finance tools that calculate a budget and combine event planning and budgeting.”
- “Purchased web domain name entitled “spendology.net” from Host Gator. Established wordpress blog domain “spendology.wordpress.com.” The wordpress blog was entitled the “Spendology Blog” and the “About” page identified Spendology as a company that creates personal finance web apps (currently states that *Spendology is a company that makes budgeting super easy*). Completed 3 wordpress blog posts on the Spendology Blog including: Overcoming Irrationality, The Time Value of Time, Own the Market, and MAD About the Joneses.”
- “Developed a beta invitation page for the spendology.net website. Created a landing page for the spendology.net website that described ‘a web app that combines event planning and budgeting to help [customers] plan and prioritize expenses.’ Spendology personal finance book club on the meetup.com site. Planned and hosted a Spendology personal finance book club meeting in September 2010.”

(Ex. 2, Applicant's Response to Interrogatory No. 1.)

Additionally, in his motion for summary judgment, the only pre-August 2010 activity Ashe mentions is as follows:

- “Applicant emailed a copy of a presentation titled “Activity-Based Budgeting App” on May 28, 2010. Applicant's presentation was revised and emailed to a colleague on May 29, 2010. The presentation detailed how the Applicant would design and develop an online financial calculator that would enable customers to create a budget and plan and prioritize expenses.”
- “The Applicant sent an online survey on June 15, 2010 using Google Drive's web survey tool. The ‘Personal Budgeting Survey’ described Applicant's intent to create a budgeting web application. Moreover, the online survey contained information in the field of personal finance.”

(Applicant’s MSJ at 2.)

The documents attached to Ashe’s summary judgment motion, which relate to the above assertions and which represent the entirety of documents Ashe produced in response to PNC’s document requests asking for all pre-September 2010 use of his SPENDOLOGY mark, likewise confirm that Ashe made no use in commerce, or any analogous use sufficient to confer trademark rights, prior to PNC’s first use date. For the Board’s convenience, the charts below summarize the various exhibits submitted by Ashe in connection with his summary judgment motion:

Pre-August 2010 Documents Using “Spendology”:

Exhibit	Description	Comments
A, B	Various “Spendology” blog posts dated July and August 2010	No evidence that posts were viewed by anyone; no use in connection with personal finance tools
A	July 24, 2010 email from HostGator regarding Ashe’s purchase of the “spendology.net” domain name	No evidence that website was active at that time or offered personal finance tools

Post-August 2010 Documents Using “Spendology”:

Exhibit	Description	Comments
A	Gmail Meetup Reminder entitled: “‘Spendology Kickoff: Predictably Irrational’ is tomorrow, Wednesday, September 1, 2010 7:00 PM!”	Document dated after PNC’s date of first use; no evidence this message was sent to or viewed by anyone, or that anyone attended the meeting
A	Press release dated June 27, 2011	Document dated after PNC’s date of first use

Undated Documents, Documents with Inconclusive Dates, or Other Irrelevant Documents:

Exhibit	Description	Comments
A	Personal Budgeting Survey dated June 15, 2010	No use of “Spendology”
A, C	Printouts of a “Spendology” beta website	No date except a “Copyright 2010”; no evidence these web pages were ever viewed by the public; no use in connection with personal finance tools

Exhibit	Description	Comments
D	Presentation entitled “Activity-Based Budgeting”	No use of “Spendology”
E	Various documents dated 2011 or 2012, or with no dates	Irrelevant to establishing priority of use

Accordingly, the only evidence of pre-August 2010 use of SPENDODOLOGY offered by Ashe is a handful of blog postings (with no evidence they were ever viewed by anyone) and his registration of the “spendology.net” domain name (with no evidence the website was active at that time). Under well-settled law, such limited use is insufficient to establish prior rights under the analogous use doctrine. *T.A.B. Sys. v. PacTel Teletrac*, 77 F.3d 1372, 1375-1376 (Fed. Cir. 1996) (emphasizing the high burden litigants face in establishing prior rights under the doctrine and noting that “[a]n unbroken line of precedents of both this court and the Board make clear that activities claimed to constitute analogous use must have *substantial* impact on the purchasing public.”) (emphasis added).

Indeed, the evidence put forward by the defendant in *T.A.B. Systems*, which the court found was legally insufficient to establish analogous use, was far more substantial than that put forward by Ashe here:

The remaining evidence, while relevant, does not support the necessary inference of public identification. Of the press releases PacTel issued, only one was shown to have been circulated by a national wire service. The record contains no evidence, however, to indicate how many of PacTel’s potential consumers may have been reached by that wire service story. Although the record indicates that some of PacTel’s press kits were distributed to potential customers, no evidence was presented enabling one to infer that a substantial share of the consuming public had been reached. Likewise with PacTel’s slide show presentations to seven potential customers: we discern nothing in the record to indicate whether this group of customers constituted more than a negligible portion of the relevant market. Finally, the brochures and news articles, all produced in September and October 1989, were not shown to have been so broadly or repetitively distributed that one could reasonably

infer that the consuming public came to identify TELETRAC with PacTel's services by October 1989. This record evidence, which does not permit one to infer either that PacTel reached more than a negligible share of potential customers or that the customers who were reached saw more than a few references to TELETRAC over a one or two month period, is legally insufficient to ground PacTel's analogous use claim.

Id. at 1375-1376; *see also Jim Dandy Co. v. Martha White Foods, Inc.*, 458 F.2d 1397, 1399 (CCPA 1972) (“[W]hile a party may rely on advertising and promotional use of a term or slogan to show superior rights over a subsequent trademark use of a term, the prior advertising must have been of such nature and extent that the term or slogan has become *popularized in the public mind*”) (emphasis added); *Old Swiss House, Inc. v. Anheuser-Busch, Inc.*, 569 F.2d 1130, 1133 (CCPA 1978) (where the evidence of analogous use consisted of 12 articles, each published only once, which appeared in various newspapers and trade journals, and a single speech at a shareholders’ meeting, the court rejected the contention that the analogous use was sufficient to demonstrate prior proprietary rights in the mark at issue because it was not the type of public exposure of a mark that would be expected to have any significant impact on the purchasing public).

Here, there is no genuine issue of material fact that the evidence submitted by Ashe (i.e., a handful of blog postings that no one may have ever viewed and his registration of the “spendology.net” domain name with no active website or at best a beta version that no one may have ever accessed) is legally insufficient to establish priority. Such evidence fails as a matter of law to show that Ashe’s SPENDODOLOGY mark had a substantial impact on the purchasing public or cause his SPENDODOLOGY mark to become popularized in the public mind before PNC’s first use date of August 2010. Accordingly, Ashe’s motion for summary judgment should be denied and summary judgment should be granted in favor of PNC on the issue of priority.

C. Ashe Acknowledges There Is No Genuine Issue Regarding Likelihood of Confusion

As Ashe acknowledges in his summary judgment motion, “likelihood of confusion is not an issue.” (Applicant’s MSJ at 3.) Also, when asked whether Ashe believes the services offered under his SPENDOLOGY mark and covered by his Application Serial No. 85/456,136 are “the same or closely related to” the services identified in PNC’s Application Serial No. 85/650,817, Ashe responded, “The services are closely related.” (Ex. 2, Applicant’s Response to Interrogatory No. 8.) Accordingly, based on Ashe’s own admissions, there is no genuine issue of material fact regarding the likelihood of confusion between the parties’ marks.

IV. CONCLUSION

Because no genuine issues of material fact exist as to priority and likelihood of confusion, PNC respectfully requests that summary judgment be granted in its favor. In the alternative, to the extent the Board finds that a genuine issue of material fact exists as to priority, PNC requests that the Board deny Ashe’s motion for summary judgment and allow the case to proceed to trial.

Respectfully submitted,

Dated: June 18, 2013

/Naresh Kilaru/
Mark Sommers
Naresh Kilaru
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Attorneys for Opposer
The PNC Financial Services Group, Inc.

CERTIFICATE OF SERVICE

This will certify that a copy of the foregoing OPPOSER'S OPPOSITION TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT AND OPPOSER'S CROSS-MOTION FOR SUMMARY JUDGMENT has been served upon Applicant via e-mail and First Class U.S. Mail with postage fully prepaid on this 18th day of June 2013, as follows:

Keith Alexander Ashe
DBA Spendology
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Bethesda, MD 20814-3150
keithashe@spendology.net

/Pamela Neal/
Pamela Neal
Trademark Litigation Clerk

The PNC Financial Services Group, Inc.,

Opposer

v.

Keith Alexander Ashe d/b/a Spendology,

Applicant

Opposition No. 91207409

EXHIBIT 1
to
Opposer's Opposition to Applicant's Motion for
Summary Judgment and Opposer's Cross-
Motion for Summary Judgment

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

The PNC Financial Services Group, Inc.,)	
)	
Opposer,	)	Opposition No. 91207409
)	
v.	)	Mark: SPENDOLOGY
)	
Keith Alexander Ashe d/b/a Spendology,	)	Serial No.: 85/456,136
	)	Filing Date: October 25, 2011
Applicant.	)	Published: June 12, 2012
)	

DECLARATION OF BRYAN L. MACKRELL

I, Bryan Mackrell, declare that the following is true and correct under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I serve as Product Manager, Payments & eBusiness, at PNC Financial Services Group, Inc. This declaration is based on my personal knowledge.

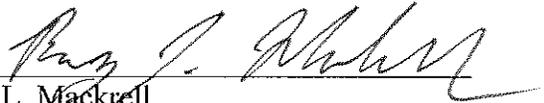
2. In August 2010, PNC added a number of new functions and features to its Spending Zone money management tool located at its Virtual Wallet website (www.pncvirtualwallet.com). Among these tools were the “Spendology” tools which provide customers with an easy way to track and manage their expenses. PNC began offering its “Spendology” services to the general public on August 26, 2010 and has been using its “Spendology” mark continuously in commerce since that time.

3. PNC’s “Spendology” tools provide customers with a visual and interactive way to see what they are spending their money on each month. Among other things, the tools break down expenses into categories like Education, Restaurants, and Gas, and allow customers to set a

budget for each. Customers can also opt to receive reminder emails if they are close to reaching their maximum budget for any category.

4. Examples of PNC's use of its SPENDOLOGY mark are attached as Exhibit A to my declaration. PNC's use of the "Spendology" mark in August 2010 was substantially the same as these uses and the use on its current website. See <https://www.pncvirtualwallet.com/features/#spendingzone>.

Executed this 18th day of June, 2013.


Bryan L. Mackrell

The PNC Financial Services Group, Inc.,

Opposer

v.

Keith Alexander Ashe d/b/a Spendology,

Applicant

Opposition No. 91207409

EXHIBIT A

to

Declaration of Bryan L. Mackrell

OVERVIEW CALENDAR BILL PAY DANGER DAY MONEY BAR WISH LIST **SPENDING ZONE** SAVINGS ENGINE PUNCH THE PIG MOBILE BANKING VW STUDENT

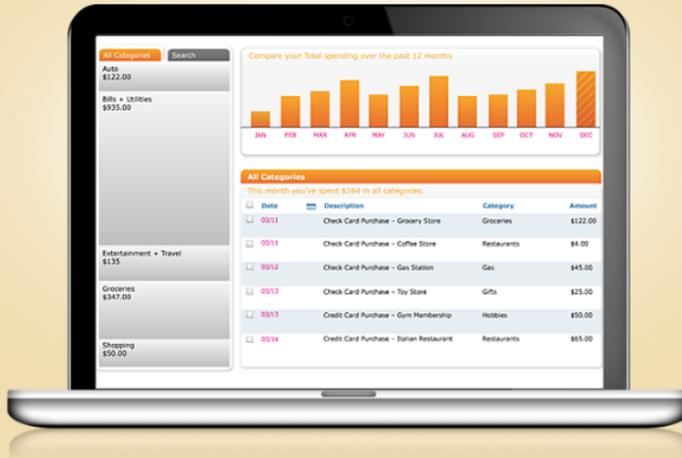
< ||||| > DRAG

SPENDING ZONE

PRINT

PACE YOURSELF

It's easy for money to fly out the door, especially when you're having fun. Spending Zone's Spendology™ tools provide a simple way to see exactly what you're spending your money on each month — and get a hold on it. Broken down into categories like Education, Restaurants, Gas and more, it allows you to set a budget for each. You can also opt to get handy reminder emails if you're close to maxing out your budget for any category. That way, you can hit the brakes before going over the edge.



FROM THE CREATORS



"Other banks just give you data — heaps of transactions that detail what you've spent. We've taken the extra step to turn that data into information you can actually use."



— Chris B.

CUSTOMER REVIEW

"Because of the Spending Zone, I'm able to budget and keep my head above water at all times."

— LonBeth

READ REVIEWS

GET ORIENTED

- Home
- Terms and Conditions
- Site Map
- Security Assurance
- Privacy Policy

GO MOBILE

- Virtual Wallet for iPhone
- Virtual Wallet for iPad
- Virtual Wallet for Android phone
- Virtual Wallet for Android tablet

REACH OUT

- Contact Us
- Tell a Friend
- Branch Locator



Feedback

SIGN UP

Opening a Virtual Wallet online is simple — it takes only 10 minutes and there's nothing to sign.

GET VIRTUAL WALLET

© 2012 The PNC Financial Services Group Inc. All rights reserved. PNC Bank, National Association. Member FDIC.

PNC has numerous patents/pending patent applications directed at various features and functions of Virtual Wallet.

¹ For Virtual Wallet only: If you exceed the 3-check-per-monthly-statement-cycle limit, you will be charged a fee of \$.50 per check.

² Virtual Wallet with Performance Spend provides automatic reimbursement of non-PNC Bank ATM fees. Other financial institutions' surcharge fees will be reimbursed up to \$8 maximum at the end of the statement period.

³ To qualify for the high yield rate (relationship rate), you must have 5 or more PIN and/or signature point-of-sale transactions (excluding cash advances) during the previous calendar month on your Spend account using your Virtual Wallet Visa Check Card or your Visa credit card linked with your Virtual Wallet online view.

Starting with the calendar month following when you open your Virtual Wallet and monthly thereafter, whether the account earns the standard or the relationship rate for the entire calendar month will be determined on the first of the month based upon the number of qualifying transactions for the previous calendar month.

⁴ PNC does not charge a fee for Mobile Banking. However, third party message and data rates may apply. These include fees your wireless carrier may charge you for data usage and text messaging services. Check with your wireless carrier for details regarding your specific wireless plan and any data usage or text messaging charges that may apply. Also, a supported mobile device is needed to use the Mobile Banking App. Mobile Deposit is a feature of PNC Mobile Banking. Use of the Mobile Deposit feature requires a supported camera-equipped device and you must download a PNC mobile banking app. Eligible PNC Bank account and PNC Bank Online Banking required. Certain other restrictions apply. See the mobile banking terms and conditions in the PNC Online Banking Service Agreement.

iPhone is a trademark of Apple, Inc.

Android is a trademark of Google, Inc.

Popmoney is a registered mark of CashEdge, Inc.



Spendology™ Tools
 Track Budget

February 2013

- All Categories Search
- Auto
 - Bank Transactions
 - Bills + Utilities
\$6,968.05
 - Child Expenses
 - Entertainment + Travel
 - Groceries
 - Healthcare
 - Home
 - Savings + Investments
\$7,546.00
 - Shopping



All Categories
 This month, you've spent \$18,314.30 in All Categories

Date	Description	Category	Amount
02/27/13	CHECK CARD PURCHASE XXXXX3517 OWL CLEANERS C	Home Maintenance	\$15.00
02/27/13	POS PURCHASE POSGT066590 0590323 GIANT EAGLE I	Groceries	\$15.19
02/27/13	CHECK CARD PURCHASE XXXXX0288 CARDAMONE HAIF	Personal Care	\$36.00
02/27/13	CHECK 8479 072759840	Checks Written	\$81.62
02/27/13	TWH AUTO TRANSFER TO XXXXX8793	Savings	\$150.00
02/26/13	CHECK CARD PURCHASE XXXXX0288 FREEDOM MARKE	Groceries	\$5.30
02/26/13	TWH AUTO TRANSFER TO XXXXX4023	Savings	\$150.00

The PNC Financial Services Group, Inc.,

Opposer

v.

Keith Alexander Ashe d/b/a Spendology,

Applicant

Opposition No. 91207409

EXHIBIT 2
to
Opposer's Opposition to Applicant's Motion for
Summary Judgment and Opposer's Cross-
Motion for Summary Judgment

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE
TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Application Serial No: 8546136

Published by the Official Gazette on June 12, 2012

PNC Financial Services Group, Inc.

Opposer

v.

Spendology LLC

Applicant

Opposition No: 91207409

**APPLICANT'S RESPONSE TO
OPPOSER'S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Spendology LLC ("Applicant") responds as follows to PNC Financial Services Group, Inc. ("Opposer"):

RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1:

Describe in detail Applicant's use of "Spendology" prior to September 2010.

RESPONSE TO INTERROGATORY NO. 1:

Conducted background research and researched existing online tools. Deployed budgeting survey with express intent of analyzing data and utilizing findings to develop personal finance web apps. Developed problem statements, methodology, and algorithms for online personal finance tools that calculate a budget and combine event planning and budgeting.

Purchased web domain entitled "spendology.net" from Host Gator. Established wordpress blog domain "spendology.wordpress.com". The wordpress blog was entitled the "Spendology Blog" and the "About" page identified Spendology as a company that creates personal finance web apps (currently states that *Spendology is a company that makes budgeting super easy*). Completed 3 wordpress blog posts on the Spendology Blog including: Overcoming Irrationality, The Time Value of Time, Own the Market, and MAD About the Joneses.

Developed a beta invitation page for the spendoogy.net website. Created a landing page for the spendology.net website that described "a web app that combines event planning and budgeting to help [customers] plan and prioritize expenses". Spendology personal finance book club on the meetup.com site. Planned and hosted a Spendology personal finance book club meeting in September 2010.

INTERROGATORY NO. 2:

Describe in detail all facts that Applicant believes supports its claim of "use analogous to trademark use" in July 2010 (as alleged in Applicant's Second Affirmative Defense), including how Applicant used Applicant's Mark during that time.

RESPONSE TO INTERROGATORY NO. 2:

Purchased web domain entitled "spendology.net" from Host Gator. Established wordpress blog domain "spendology.wordpress.com". The wordpress blog was entitled the "Spendology Blog" and the "About" page identified Spendology as a company that creates personal finance web apps (currently states that *Spendology is a company that makes budgeting super easy*). Completed 3 wordpress blog posts on the Spendology Blog including: Overcoming Irrationality, The Time Value of Time, Own the Market, and MAD About the Joneses.

Developed a beta invitation page for the spendoogy.net website. Created a landing page for the spendology.net website that described "a web app that combines event planning and budgeting to help [customers] plan and prioritize expenses". Spendology personal finance book club on the meetup.com site. Planned and hosted a Spendology personal finance book club meeting in September 2010.

INTERROGATORY NO. 3:

State the date (by month and year) on which Applicant first used Applicant's Mark in commerce as a trademark for a "personal finance tool."

RESPONSE TO INTERROGATORY NO. 3:

June 2011

INTERROGATORY NO. 4:

State the date (by month and year) on which Applicant first used its www.spendology.net website in commerce, and describe in detail the services that Applicant offered through its website as of that date.

RESPONSE TO INTERROGATORY NO. 4:

Launched a personal finance web application called the Budgetizer which helped users create a personal monthly budget in less than 10 minutes. The product was launched on June 27, 2011.

INTERROGATORY NO. 5:

Describe in detail the circumstances surrounding the May 2010 presentation referenced in Applicant's First Affirmative Defense, including but not limited to stating whether the presentation contained the term "Spendology," identifying the total number of customers who viewed or received such presentation prior to September 2010, and identifying those customers by name and e-mail address.

RESPONSE TO INTERROGATORY NO. 5:

A presentation was developed outlining features and technical specifications for developing a personal finance web application. The presentation was not sent to any customers.

INTERROGATORY NO. 6:

Describe in detail the circumstances surrounding the June 15, 2010 online survey titled "Personal Budgeting Survey" referenced in Applicant's First Affirmative Defense, including but not limited to stating whether the survey contained the term "Spendology" and identifying the total number of survey respondents.

RESPONSE TO INTERROGATORY NO. 6:

A survey was sent using Google Docs Survey tool to six respondents to collect requirements for the development of online personal finance web applications.

INTERROGATORY NO. 7:

With respect to Applicant's Sixth Affirmative Defense, state the date (by month and year) on which Applicant first used "Spendology" in connection with (a) a conference, (b) a social media platform, (c) a press release, and (d) online marketing.

RESPONSE TO INTERROGATORY NO. 7:

Organization or Event	Date	Description
Bloomberg LINK Conference	10/11/2011	Represented Spendology at conference
Google	6/14/2011 – 6/19/2011 11/28/2011 – 4/22/2012 6/25/2012 – 8/10/2012	Ran multiple Google Adwords Campaigns
Google DC and Milken Institute: How the Ideas Economy is Fueling the Global Economy	3/15/2012	Represented Spendology at conference
Twitter	4/25/2011	Joined Social Media Platform
Facebook	5/21/2011	Joined Social Media Platform
PR Newswire	1/2/2012	Press Release sent using PR Newswire

INTERROGATORY NO. 8:

State whether Applicant believes the services offered under its SPENDOLOGY mark (including but not limited to those services listed in Application No. 85/456,136) are the same or closely related to the services identified in Opposer's Application No. 85/650,817.

RESPONSE TO INTERROGATORY NO. 8:

The services are closely related.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of Spendology LLC's Response to the First Set of Interrogatories was served electronically, on this 6th day of February 2013, on the following:

Mark Sommers
Finnegan, Henderson, Farabow, Garrett & Dunner, L.L.P.
901 New York Avenue, NW
Washington, DC 20001-4413
UNITED STATES

A handwritten signature in black ink, appearing to read 'Keith Alexander Ashe', is written over a horizontal line. The signature is stylized and somewhat illegible.

Keith Alexander Ashe

Spendology LLC

CEO